

Abdul Kadir and Others

Vs

State of Assam

Criminal Appeal No. 471 of 1976

(Ranganath Misra, A. N. Sen JJ)

25.09.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is directed against the reversing judgment of the Gauhati High Court, by which the judgment of acquittal of the trial court was set aside and the respondents were convicted under Section 304, Part I, read with Section 34, IPC and each of them was sentenced to five years' rigorous imprisonment.

2. Eight persons were put on trial under Section 302/149, IPC on the allegation that one Afil Ali had grown paddy on 7 bighas of land. On November 21, 1968, around 6 a.m. the accused persons along with others were found reaping that paddy. Afil Ali and his brother Adam Ali went near the land and protested against the criminal act of the accused persons. Thereupon accused Abdul Kadir struck Afil Ali on his head with a dao; accused Rajab Ali, Abdul Majid and Altaf assaulted Afil Ali with lathis and spears. Accused Abdul Jabbar struck Adam Ali on his head with a lathi as a result of which he fell down. Saheb Ali and Rajab Ali gave thrashings with their lathis. Adam Ali ultimately succumbed to the injuries. Some time after Afil Ali also died. First information was lodged with the police and after due investigation 8 accused persons were put on trial for offences punishable under Sections 302/149 and 148, IPC. Abdul Jabbar, Abdul Kadir and Rajab Ali were also separately charged under Section 302, IPC.

3. Prosecution examined 5 witnesses including the Investigating Officer. The learned trial Judge found that the accused persons were in possession of the land and had grown the paddy. He, therefore, found that when Afil Ali and Adam Ali accompanied by others attacked the accused on their land, the accused had every right to go to the extent of causing grievous hurt to the attackers in the exercise of the right of private defence of property. While exercising that right if the accused persons were attacked with sharp cutting weapons on vital parts of their bodies they were entitled to even cause death. He accordingly found the accused not guilty and acquitted them.

4. An appeal was carried by the State against the acquittal. The High Court affirmed the finding of the trial court that accused Abdul Kadir was in possession of the disputed land at the relevant time and Afil Ali and his group committed criminal trespass upon the same at the time of the occurrence. The High Court, therefore, found that the acquittal of the respondents of the charges under Sections 148 and 302/149, IPC was justified. It next proceeded to examine the question whether the accused persons had exceeded their right of private defence. On the basis of the evidence given by DW 1, the High Court found :

. . . accused Abudl Jabbar and Rajab Ali received grievous injuries caused by sharp cutting weapon, accused Jabbar on his head and accused Rajab Ali on his belly. We have already observed that this fact has not been seriously disputed. The prosecution witnesses have evidently tried to suppress this fact.

5. The High Court next found that these two accused persons had been injured first and they could, therefore, not have taken part in assaulting Afil Ali and Adam Ali. Accordingly they were entitled to benefit of reasonable doubt. Six accused persons were thus left in the field. The High Court did not specifically deal with the case of three of the accused persons but came to hold that the three respondents before it had exceeded their right of private defence and had, therefore, been guilty of the offence under Section 304, Part I, IPC read with Section 34, IPC. Accordingly, while upholding the acquittal of five of the accused, the High Court convicted the three appellants.

6. Upon hearing counsel for the parties we are inclined to agree with the submissions advanced on behalf of the appellants that the High Court was in error in reversing the judgment of acquittal. Both the courts below have found that : (1) the land was in the possession of the accused persons; (2) paddy crop had been grown by the accused persons and the same was ready for harvesting; (3) the deceased and their people were the aggressors; and (4) when the accused persons tried to resist the attempt of the deceased and their group in the matter of harvesting of the paddy crop, two of the accused persons were badly beaten up and they suffered grievous injuries. On the report of DW 1, injuries on Abdul Jabbar were found to be on the head. One piece of the scalp 3 1/2" x 1 1/2" bone deep had been removed by a sharp instrument and there was severe bleeding from the wound. He also suffered another scalp cut by a sharp instrument and the injury was of the size of 2 1/2" x 2" bone deep. It was attached to the head by a piece of skin 1/4" in size and there was severe bleeding. Both these injuries on Abdul Jabbar were found to be grievous. Similarly, the doctor found grievous injuries on Rajab Ali. There was a carved incised wound of the level of right rib on the right side. The injury was 4 1/2" in length and the injury was also grievous and it had been caused by a sharp cutting instrument. The High Court found that the prosecution witnesses attempted to suppress these injuries. There was a further finding that these two persons were first injured by the aggressors. On these findings the accused persons were entitled to exercise the right of private defence of the person and of property as envisaged in Section 97, IPC. Section 100, IPC provides :

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section (Section 99), to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely -

Fist. - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

7. The party of the deceased was admittedly armed with sharp cutting instruments by use of which the injuries on the two accused persons had been inflicted. The blows were on vital parts of these two accused persons. If there was no resistance offered it was very likely that with some further blows death would have occurred so as to give rise to the first contingency indicated in Section 100. On the finding of the courts below, grievous hurt has been caused which gave rise to the second contingency. In the facts of the case the accused persons were, therefore, entitled in the exercise of

the right of private defence of the body to cause death. Section 103 of the Indian Penal Code indicates when the right of private defence of property extends to causing death. That provides :

The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right; be an offence of any of the descriptions hereinafter enumerated, namely :

#First. - * * *Secondly. - * * *Thirdly. - * * *##

Fourthly. - Theft, mischief or house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

8. The defence plea which has been accepted in the courts below does indicate that the paddy crop was ripe and ready for harvesting and it had been grown by the accused persons. The two deceased persons and their men had trespassed into the property and were about to harvest the paddy. Theft and mischief were either being committed or threatened to be committed. When accosted they wanted to forcibly commit the offence of theft and mischief and when the accused persons wanted to exercise their right, grievous blows were given. In the facts of this case, the right of private defence of body and property was available to the accused persons and we are of the view that in the circumstances indicated and on the findings recorded, this right extended to causing of death. This is not a case where the exception under Section 99 of the Indian Penal Code applied. The person in possession of the property is entitled to maintain his possession and for that purpose is entitled to the use of reasonable force to keep away the trespasser. The record shows that the blows inflicted were before retreat had been effected by the offender. The High Court, in our view, clearly went wrong in reversing the acquittal recorded by the trial Judge and in giving a finding that the right of private defence had been exceeded.

9. We accordingly allow the appeal, reverse the judgment of the High Court and uphold the acquittal recorded by the trial Judge. The appellants are on bail. They are discharged from their bonds.

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